

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

AJD, INC., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases 02-CA-093895 02-CA-097827
LEWIS FOODS OF 42ND STREET, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases 02-CA-093893 02-CA-098662
18884 FOOD CORP., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases 02-CA-094224 02-CA-098676
14 EAST 47TH STREET, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases 02-CA-094679 02-CA-098604
JOHN C FOOD CORP., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases 02-CA-093927 02-CA-098659
840 ATLANTIC AVENUE, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Case 02-CA-097305
1531 FULTON STREET, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases 02-CA-103771 02-CA-112282
McCONNER STREET HOLDING, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S, USA, LLC, JOINT EMPLOYERS	Case 02-CA-098009
McCONNER STREET HOLDING, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Case 02-CA-103384
MIC-EASTCHESTER, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S, USA, LLC, JOINT EMPLOYERS	Case 02-CA-103726
BRUCE C. LIMITED PARTNERSHIP, A	Case 02-CA-106094

**McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC, JOINT EMPLOYERS**

and

**FAST FOOD WORKERS COMMITTEE AND
SERVICE EMPLOYEES INTERNATIONAL
UNION, CTW, CLC**

and

**JO-DAN MADALISSE LTD, LLC d/b/a
MCDONALD'S, A FRANCHISEE OF
MCDONALD'S USA, LLC and MCDONALD'S
USA, LLC, Joint Employers**

**Cases 04-CA-125567
04-CA-129783
04-CA-133621**

and

**PENNSYLVANIA WORKERS ORGANIZING
COMMITTEE, A PROJECT OF THE FAST FOOD
WORKERS COMMITTEE**

and

**KARA VITES RESTAURANTS 11102, LLC, A
McDONALD'S FRANCHISEE, AND
McDONALD'S, USA, LLC, JOINT EMPLOYERS**

Case 13-CA-106490

**KARAVITES RESTAURANTS 26, INC., A
McDONALD'S FRANCHISEE, AND
McDONALD'S, USA, LLC, JOINT EMPLOYERS**

Case 13-CA-106491

**RMC LOOP ENTERPRISES, LLC, A
McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC, JOINT EMPLOYERS**

Case 13-CA-106493

**WRIGHT MANAGEMENT, INC., A
McDONALD'S FRANCHISEE, AND
McDONALD'S, USA, LLC, JOINT EMPLOYERS**

**Cases 13-CA-107668
13-CA-113837**

**V. OVIEDO, INC. , A McDONALD'S
FRANCHISEE, AND McDONALD'S USA, LLC,
JOINT EMPLOYERS**

**Cases 13-CA-115647
13-CA-119015
13-CA-123916
13-CA-124813
13-CA-131440**

McDONALD'S RESTAURANTS OF ILLINOIS, INC., Cases 13-CA-117083
13-CA-118691
13-CA-121759

LOFTON & LOFTON MANAGEMENT V, INC., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS Case 13-CA-118690

K. MARK ENTERPRISES, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS Cases 13-CA-123699
13-CA-129771

NORNAT, INC., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS Case 13-CA-124213

KARA VITES RESTAURANT 5895, INC., A McDONALD'S FRANCHISEE, AND McDONALD'S, USA, LLC, JOINT EMPLOYERS Case 13-CA-124812

TAYLOR & MALONE MANAGEMENT, A McDONALD'S FRANCHISEE, AND McDONALD'S, USA, LLC, JOINT EMPLOYERS Case 13-CA-129709

RMC ENTERPRISES, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS Case 13-CA-131141

KARA VITES RESTAURANT 6676, LLC , A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS Case 13-CA-131143

TOPAZ MANAGEMENT, INC., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS Case 13-CA-131145

and

WORKERS ORGANIZING COMMITTEE OF CHICAGO

and

MAZT, INC., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, AS JOINT EMPLOYERS Cases 20-CA-132103
20-CA-135947
20-CA-135979

20-CA-137264

and

**WESTERN WORKERS ORGANIZING
COMMITTEE**

and

**FAITH CORPORATION OF INDIANAPOLIS, A
McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC, JOINT EMPLOYERS**

**Cases 25-CA-114819
25-CA-114915
25-CA-130734
25-CA-130746**

and

**WORKERS ORGANIZING COMMITTEE OF
CHICAGO**

and

**D. BAILEY MANAGEMENT COMPANY., A
McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC AS JOINT
EMPLOYERS**

**Cases 31-CA-127447
31-CA-130085
31-CA-130090
31-CA-132489
31-CA-135529
31-CA-135590**

**2MANGAS INC., A McDONALD'S
FRANCHISEE, AND McDONALD'S USA, LLC
AS JOINT EMPLOYERS**

**Cases 31-CA-129982
31-CA-134237**

**SANDERS-CLARK & CO., INC, A
McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC AS JOINT
EMPLOYERS**

**Cases 31-CA-128483
31-CA-129027
31-CA-133117**

and

LOS ANGELES ORGANIZING COMMITTEE

**GENERAL COUNSEL’S OPPOSITION TO RESPONDENT McDONALD’S USA,
LLC’S MOTION FOR A BILL OF PARTICULARS OR TO STRIKE THE JOINT
EMPLOYER ALLEGATIONS AND DISMISS THE COMPLAINT**

On December 19, 2014, the Directors of Regions 2, 4, 13, 20, 25 and 31 issued complaints and notices of hearings setting forth allegations that the above-captioned Respondents violated Sections 8(a)(1) and (3) of the Act. A copy of the Region 2 complaint (“Complaint”) is attached as Exhibit A. On December 29, 2014, Respondent McDonald’s USA, LLC (“McDonald’s”) filed motions in Regions 2, 4, 13, 20, 25 and 31 seeking a bill of particulars or, alternatively, for dismissal of the joint employer allegations in the complaints in those regions. A copy of the motion filed in Region 2 (“Motion”) is attached as Exhibit B. On January 5, 2015, the General Counsel transferred the above-captioned cases to the Director of Region 2. On January 6, 2015, the Director of Region 2 issued an order consolidating the above-captioned cases. The General Counsel responds to the motions filed by McDonald’s in Regions 2, 4, 13, 20, 25 and 31 by filing this single Opposition to McDonald’s motion filed in Region 2.¹

A bill of particulars is justified only when the complaint is so vague that the party charged is unable to respond to the General Counsel’s case. *North American Rockwell Corp. v. NLRB*, 389 F.2d 866, 871 (10th Cir. 1968); *American Newspaper Pub. Ass’n v. NLRB*, 193 F.2d 782 (7th Cir. 1952), *affd.* 345 U.S. 100 (1953).² The Complaint alleges the existence of a franchising relationship between McDonald’s and various other entities—thereby complying

¹ Because motions filed by McDonald’s in Regions 2, 4, 13, 20, 25, and 31 raise the same substantive arguments against the General Counsel’s complaint allegations, the General Counsel, by opposing McDonald’s Region 2 motion responds and opposes McDonald’s motions filed in Regions 2, 4, 13, 20, 25 and 31.

² McDonald’s attempts to impose a more stringent standard by selectively quoting *Soule Glass and Glazing Co. v. NLRB*, 652 F.2d 1055, 1074 (1st Cir. 1981), which in turn quotes *J.C. Penney Co. v. NLRB*, 384 F.2d 479 (10th Cir. 1967), a case in which the court refused to enforce “a finding which was neither charged in the complaint nor litigated at the hearing,” *id.* at 482. The full quote is “Failure to clearly define the issues and advise an employer charged with a violation of the law of the specific complaint he must meet *and provide a full hearing upon the issue presented* is, of course, to deny procedural due process of law.” *Id.* at 483. The inapplicability of both the holding and the quotation to the current situation should be plain.

with the suggestion of Section 300.5(b) of the National Labor Relations Board Pleadings Manual section (cited by McDonald's at Motion, p. 4 as Section 300.3(b)) to include a description of the business—and asserts that McDonald's "possesse[s] and/or exercise[s] control over the labor relations policies of" the other named entities, i.e., its franchises.³ This is sufficient notice to satisfy due process concerns. See e.g., *Pergament United Sales, Inc. v. NLRB*, 920 F.2d 130, 135 (2d Cir. 1990)(In evaluating whether Respondent was afforded sufficient notice to satisfy due process, the court observed that "[n]otice does not mean a complaint necessarily must state the legal theory upon which the General Counsel intends to proceed."); *Swift & Co. v. NLRB*, 106 F.2d 87, 91 (10th Cir. 1939); *Bakery Wagon Drivers v. NLRB*, 321 F.2d 353, 356 (D.C. Cir. 1963)(Board complaints need not conform to the technicalities of common law pleading: "[i]t is sufficient if respondent 'understood the issue and was afforded full opportunity to justify its actions'" (citing *NLRB. v. Mackay Radio & Tel. Co.*, 304 U.S. 333, 350 (1938))). Moreover, because no one is in a better position to know what facts support or undermine that allegation than McDonald's itself, McDonald's is fully able to respond to that allegation. Thus, no bill of particulars is justified and the motion must be denied.

Similarly, the complaint meets the requirements of Section 102.15 of the Board's Rules and Regulations, which provides in relevant part: "The complaint shall contain... a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed." Every act alleged by the Complaint to constitute an unfair labor practice, viz., paragraphs 7–11, 18–20, 27–27, 34–37, 43, 49–51, 57–

³ The General Counsel maintains he has satisfied his pleading obligations; however, to the extent McDonald's argues the Complaint does not comply with the Board's Casehandling or Pleading Manuals, the General Counsel notes the Manuals contain guidelines, not requirements. *Benjamin H. Realty Corp.*, 361 NLRB No. 103, n.1. (2014).

59, 65, 71, 77–81, and 88–91, identifies the approximate dates and places of those acts along with the identities of the actors.

McDonald's fails to cite any authority in support of its claim that the Complaint violates McDonald's Fifth Amendment rights, Motion at 5. McDonald's also fails to address the well-established import of the section of the Administrative Procedures Act upon which it relies, viz., 5 U.S.C. § 554(b)(3). As numerous courts have held, the requirements of that statute are met when the party is apprised of the issues in controversy and not misled. See e.g., *Intercontinental Industries, Inc. v. American Stock Exchange*, 452 F.2d 935, 941 (5th Cir. 1971), cert. denied 409 U.S. 842 (1972); *Long v. Board of Governors of the Federal Reserve System*, 117 F.3d 1145, 1158 (10th Cir. 1997); *L.G. Balfour Co. v. FT*, 442 F.2d 1, 19 (7th Cir. 1971); *Boston Carrier, Inc. v. ICC*, 746 F.2d 1555, 1560 (D.C. Cir. 1984); *Golden Grain Macaroni Co. v. FTC*, 472 F.2d 882, 885 (9th Cir. 1972) (“[T]he purpose of the [Administrative Procedure] Act is satisfied, and there is no due-process violation, if the party proceeded against understood the issue and was afforded full opportunity to justify its conduct”; internal quotation marks omitted), cert. denied 412 U.S. 918 (1973). Because McDonald's has been informed that the General Counsel seeks to impose liability upon it for conduct committed by certain of its franchises by virtue of its status as a joint employer of employees of those franchises, McDonald's has been given plain notice of the issue in controversy.

Finally, Respondent's argument for a bill of particulars, which appears to be grounded on the false premise that there is no precedent for the joint employer allegations, misses the point. Respondent, like the General Counsel is free to argue its theory of joint employer liability, without expressing those theories in its pleadings. The question posed by a Motion for a Bill of Particulars is still whether the complaint is so vague that McDonald's is unable to respond to the

Complaint.⁴ For the reasons already discussed, McDonald's fails that test. For this and the other reasons cited above, McDonald's motion should be denied in its entirety.

Dated: New York, New York
January 14, 2014

/s/ Jamie Rucker

Jamie Rucker, Counsel for the General Counsel

⁴ The fact that McDonald's has filed an answer suggests that the complaint was not so deficient as to preclude an effective response, McDonald's statement that by filing an answer it has not waived its right to a bill of particulars notwithstanding (See e.g. McDonald's Answer par. 5(c)). The issue is not one of waiver, but whether as a factual matter McDonald's has sufficient notice of the allegations in the complaint to respond.

EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

AJD, INC., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases: 02-CA-093895 02-CA-097827
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LEWIS FOODS OF 42ND STREET, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases: 02-CA-093893 02-CA-098662
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18884 FOOD CORP., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases: 02-CA-094224 02-CA-098676
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14 EAST 47TH STREET, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases: 02-CA-094679 02-CA-098604
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JOHN C FOOD CORP., A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases: 02-CA-093927 02-CA-098659
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840 ATLANTIC AVENUE, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Case: 02-CA-097305
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1531 FULTON STREET, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Cases: 02-CA-103771 02-CA-112282
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McCONNER STREET HOLDING, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S, USA, LLC, JOINT EMPLOYERS	Case: 02-CA-098009
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McCONNER STREET HOLDING, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S USA, LLC, JOINT EMPLOYERS	Case: 02-CA-103384
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MIC-EASTCHESTER, LLC, A McDONALD'S FRANCHISEE, AND McDONALD'S, USA, LLC, JOINT EMPLOYERS	Case: 02-CA-103726
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BRUCE C. LIMITED PARTNERSHIP, A	Case: 02-CA-106094
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**McDONALD’S FRANCHISEE, AND
McDONALD’S USA, LLC, JOINT EMPLOYERS
and**

**FAST FOOD WORKERS COMMITTEE AND
SERVICE EMPLOYEES INTERNATIONAL
UNION, CTW, CLC**

**ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT,
AND NOTICE OF HEARING**

Pursuant to Section 102.33(c) of the Rules and Regulations of the National Labor Relations Board (“the Board”) and to avoid unnecessary costs or delay, I ORDER THAT Cases 02-CA-093893, 02-CA-093895, 02-CA-093927, 02-CA-094224, 02-CA-094679, 02-CA-097305, 02-CA-097827, 02-CA-098009, 02-CA-098604, 02-CA-098659, 02-CA-098662, 02-CA-098676, 02-CA-103384, 02-CA-103726, 02-CA-103771, 02-CA-106094, and 02-CA-112282 are consolidated. These cases were filed by the Fast Food Workers’ Committee (“FFWC”) and Service Employees International Union, CTW, CLC (“SEIU”) (collectively “Charging Parties”) against McDonald’s USA, LLC (“McDonald’s”) and the following McDonald’s franchisees:

CASE NUMBER	MCDONALD’S FRANCISEE IDENTIFIED IN CHARGE
02-CA-093893	Charge against McDonald’s located at 220 West 42nd Street, New York, NY, whose correct name is Lewis Foods of 42 nd Street, LLC (“Respondent McDonald’s at 220 W 42nd St.”)
02-CA-098662	Charge against James R Lewis d/b/a, Lewis Foods of 42nd Street, LLC, whose correct name is Lewis Foods of 42 nd Street, LLC (“Respondent McDonald’s at 220 W 42nd St.”)
02-CA-093895	Charge against McDonald’s located at 1188 6th Avenue New York, NY 10036, whose correct name is AJD, Inc. (“Respondent McDonald’s at 1188 6 th Ave.”)
02-CA-097827	Charge against Elaine Diekmann d/b/a Bea & AJD, whose correct name is AJD, Inc. (“Respondent McDonald’s at 1188 6 th Ave.”)

02-CA-093927	Charge against McDonald's located at 280 Madison Avenue, New York, NY 10016, whose correct name is John C Food Corp. ("Respondent McDonald's at 280 Madison Ave.")
02-CA-098659	Charge against Richard R. Cisneros d/b/a John C. Food Corp., whose correct name is John C Food Corp ("Respondent McDonald's at 280 Madison Ave.")
02-CA-094224	Charge against McDonald's located at 1651 Broadway, New York, NY 10019, whose correct name is 18884 Food Corporation ("Respondent McDonald's at 1651 Broadway")
02-CA-098676	Charge against Linda Dunham d/b/a 18884 Food Corp. (or Dunham Management Corp.), whose correct name is 18884 Food Corporation ("Respondent McDonald's at 1651 Broadway")
02-CA-094679	Charge against McDonald's located at 14 East 47th Street. New York, NY 10017, whose correct name is 14 East 47 th Street, LLC ("Respondent McDonald's at 14 E. 47th St.")
02-CA-098604	Charge against Ninosca Paulino d/b/a 14 East 47th Street, LLC, whose correct name 14 East 47 th Street, LLC ("Respondent McDonald's at 14 E. 47th St.")
02-CA-097305	Charge against Atlantic Avenue, LLC, whose correct name is 840 Atlantic Ave., LLC ("Respondent McDonald's at 840 Atlantic Ave.")
02-CA-098009	Charge against Bruce Colley, whose correct name is McConner Street Holding, LLC ("Respondent McDonald's at 2142 Third Ave.")
02-CA-103384	Charge against Bruce Colley, whose correct name is McConner Street Holding, LLC ("Respondent McDonald's at 2049 Broadway")
02-CA-103726	Charge against Bruce Colley, whose correct name is Mic-Eastchester, LLC ("Respondent McDonald's at 341 5 th Ave.")
02-CA-103771	Charge against Ninosca Paulino, whose correct name is 1531 Fulton St., LLC ("Respondent McDonald's at 1531 Fulton St.")
02-CA-112282	Charge against Ninosca Paulino, whose correct name is 1531 Fulton St., LLC ("Respondent McDonald's at 1531 Fulton St.")

02-CA-106094	Charge against Bruce Colley, whose correct name is Bruce C. Limited Partnership ("Respondent McDonald's at 4259 Broadway")
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This Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing, which is based on the charges in these cases, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* ("the Act") and Section 102.15 of the Board's Rules and Regulations. It alleges that the above-identified Respondents have violated the Act as described below:

1. The charges in these cases were filed and served as set forth in the following table:

¶	Case No.	Amended	Charging Parties	Respondents	Date Filed	Date Served
a.	02-CA-093893		FFWC	McDonald's/ McDonald's at 220 W 42nd St.	November 28, 2012	November 29, 2012
b.	02-CA-093895		FFWC	McDonald's/ McDonald's at 1188 6 th Ave.	November 28, 2012	November 29, 2012
c.		First Amended	FFWC	McDonald's/ McDonald's at 1188 6 th Ave.	December 4, 2012	December 12, 2012
d.	02-CA-093927		FFWC	McDonald's/ McDonald's at 280 Madison Ave.	November, 29, 2012	November, 30, 2012
e.	02-CA-094224		FFWC	McDonald's/ McDonald's at 1651 Broadway	December 4, 2012	December 5, 2012
f.	02-CA-094679		FFWC	McDonald's/ McDonald's at 14 E. 47th St.	December 11, 2012	December 12, 2012
g.	02-CA-097305		FFWC	McDonald's/ McDonald's at 840 Atlantic Ave.	January 30 2013	January 30 2013
h.		First Amended	FFWC	McDonald's/ McDonald's at 840 Atlantic Ave.	February 20, 2013	February 21, 2013
i.	02-CA-097827		FFWC	McDonald's/ McDonald's at 1188 6 th Ave.	February 6, 2013	February 7, 2013

j.		First Amended	FFWC	McDonald's/ McDonald's at 1188 6 th Ave.	February 20, 2013	February 20, 2013
k.		Second Amended	FFWC/ SEIU	McDonald's/ McDonald's at 1188 6 th Ave.	April 30, 2014	April 30, 2014
l.	02-CA-098009		FFWC	McDonald's/ McDonald's at 2142 Third Ave.	February 8, 2013	February 11, 2013
m.		First Amended	FFWC	McDonald's/ McDonald's at 2142 Third Ave.	February 20, 2013	February 21, 2013
n.		Second Amended	FFWC	McDonald's/ McDonald's at 2142 Third Ave.	June 14, 2013	June 19, 2013
o.	02-CA-098604		FFWC	McDonald's/ McDonald's at 14 E. 47th St.	February 15, 2013	February 20, 2013
p.	02-CA-098659		FFWC	McDonald's/ McDonald's at 280 Madison Ave.	February 15, 2013	February 20, 2013
q.	02-CA-098662		FFWC	McDonald's/ McDonald's at 220 W 42nd St.	February 15, 2013	February 20, 2013
r.	02-CA-098676		FFWC	McDonald's/ McDonald's at 1651 Broadway	February 15, 2013	February 20, 2013
s.	02-CA-103384		FFWC	McDonald's/ McDonald's at 2049 Broadway	April 23, 2013	April 23, 2013
t.		First Amended	FFWC	McDonald's/ McDonald's at 2049 Broadway	June 25, 2013	July 1, 2013
u.	02-CA-103726		FFWC	McDonald's/ McDonald's at 341 5 th Ave.	April 25, 2013	April 26, 2013
v.	02-CA-103771		FFWC	McDonald's/ McDonald's at 1531 Fulton Street	April 26, 2013	April 26, 2013
w.	02-CA-106094		FFWC	McDonald's/ McDonald's at 4259 Broadway	May 29, 2013	May 30, 2013
x.		First Amended	FFWC	McDonald's/ McDonald's at 4259 Broadway	July 11, 2013	July 15, 2013
y.		Second Amended	FFWC	McDonald's/ McDonald's at 4259 Broadway	September 11, 2013	September 13, 2013

z.	02-CA-112282		FFWC	McDonald's/ McDonald's at 1531 Fulton Street	August 29, 2013	August 30, 2013
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Charging Parties

2. (a) At all material times, the FFWC has been a labor organization within the meaning of Section 2(5) of the Act.

(b) At all material times, SEIU has been a labor organization within the meaning of Section 2(5) of the Act.

Respondent McDonald's USA, LLC

3. (a) At all material times, Respondent McDonald's has been a Delaware limited liability company with an office and place of business in Oak Brook, Illinois, and various restaurant and franchise locations throughout the United States, and has been engaged in the operation and franchising of quick-service restaurants.

(b) Annually, Respondent McDonald's, in conducting its business operations described above in subparagraph (a),

(i) derives gross revenues valued in excess of \$500,000 and

(ii) purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of Illinois.

(c) At all material times, Respondent McDonald's has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent McDonald's at 220 W. 42nd Street

4. (a) At all material times, Respondent McDonald's at 220 W. 42nd St. has been engaged in the operation of a quick-service McDonald's restaurant.

(b) At all material times, McDonald's at 220 W. 42nd Street has been a New York limited liability company with an office and place of business at 220 W. 42nd Street, New York, NY 10036.

(c) Annually, Respondent McDonald's at 220 W. 42nd Street, in conducting its business operations described above in subparagraphs (a) and (b)

(i) derives gross revenues valued in excess of \$500,000 and

(ii) purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New York.

(d) At all material times, Respondent McDonald's at 42nd St. has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. At all material times, Respondent McDonald's has:

(a) had a franchise agreement with Respondent McDonald's at 220 W 42nd St.;

(b) possessed and/or exercised control over the labor relations policies of Respondent McDonald's at 220 W 42nd St.; and

(c) been a joint employer of the employees of Respondent McDonald's at 220 W 42nd St.

6. At all material times, the following individuals held the positions set forth opposite their respective names and have been:

(a) supervisors of Respondent McDonald's at 220 W 42nd St. within the meaning of Section 2(11) of the Act and agents of Respondent McDonald's at 220 W 42nd St. within the meaning of Section 2(13) of the Act:

(i) James R. Lewis – Owner

(ii) Juan Astor – Director of Operations

(iii) John McDonnell – General Manager

(iv) Mark J. Gray – Assistant Manager

(b) supervisors of Respondent McDonald's at 220 W 42nd St. within the meaning of Section 2(11) of the Act and/or agents of Respondent McDonald's at 220 W 42nd St. within the meaning of Section 2(13) of the Act:

(v) Rosa Mejia – Shift Manager

(vi) Alecia (last name unknown (“LNU”)) – Shift Manager

7. About September 2012, Respondent McDonald's at 220 W. 42nd St., by Juan Astor, at 220 W. 42nd St., New York, NY:

(a) by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they refrained from union organizational activity; and

(b) promised its employees that terms and conditions of employment would improve, if the employees rejected union organizing efforts.

8. (a) About December 2012, Respondent McDonald's at 220 W. 42nd St., by James R. Lewis:

(i) ceased posting employees' work schedules; and

(ii) removed employee name tags.

(b) Respondent McDonald's at 220 W. 42nd St. took the actions identified in subparagraph (a) in response to union organizing.

9. About October 2012, Respondent McDonald's at 220 W. 42nd St, by John McDonnell, at 220 W. 42nd St., New York, NY:

(a) threatened its employees with unspecified reprisals for engaging in union activity;

(b) created an impression among its employees that their union activities were under surveillance.

10. (a) About December 2, 2012, Respondent McDonald's at 220 W. 42nd St. imposed more onerous and rigorous terms and conditions of employment on its employee Linda Archer by assigning her more arduous and less agreeable job assignments.

(b) Respondent McDonald's at 220 W. 42nd St. engaged in the conduct described above in subparagraph (a) because Linda Archer assisted the FFWC and engaged in concerted activities, and to discourage employees from engaging in these activities.

11. Respondent McDonald's at 220 W. 42nd St., by the individuals named below, about the dates and at the locations opposite their names, threatened its employees with discharge if they engaged in union activity:

	Agent	Date	Location
(a)	Rosa	Second week of November 2012	220 W. 42 nd St., New York, NY
(b)	Mark J. Gray	November 24, 2012	220 W. 42 nd St., New York, NY

12. By the conduct described above in paragraphs 7, 8, 9, and 11, Respondents McDonald's and McDonald's at 220 W. 42nd St., as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

13. By the conduct described above in paragraph 10, Respondent McDonald's and McDonald's at 220 W. 42nd St., as joint employers, have been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

14. The unfair labor practices of Respondents McDonald's and McDonald's at 220 W. 42nd St. described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent McDonald's at 1188 Sixth Ave.

15. (a) At all material times, Respondent McDonald's at 1188 Sixth Ave. has been engaged in the operation of a quick-service McDonald's restaurant.

(b) At all material times, McDonald's at 1188 Sixth Ave. has been a New York corporation with an office and place of business at 1188 Sixth Ave., New York, NY 10036.

(c) Annually, Respondent McDonald's at 1188 Sixth Ave., in conducting its business operations described above in subparagraphs (a) and (b)

(i) derives gross revenues valued in excess of \$500,000 and

(ii) purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New York.

(d) At all material times, Respondent McDonald's at 1188 Sixth Ave. has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

16. At all material times, Respondent McDonald's has:

(a) had a franchise agreement with Respondent McDonald's at 1188 Sixth Ave.;

(b) possessed and/or exercised control over the labor relations policies of Respondent McDonald's at 1188 Sixth Ave.; and

(c) been a joint employer of the employees of Respondent McDonald's at 1188 Sixth Ave.

17. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent McDonald's at 1188 Sixth Ave. within the meaning of Section 2(11) of the Act and agents of Respondent McDonald's at 1188 Sixth Ave. within the meaning of Section 2(13) of the Act:

(a) Elaine Diekmann – Owner

(b) Daisy Perez – General Manager

18. Respondent McDonald's at 1188 Sixth Avenue, by the individuals named below, on about the dates and at the locations listed opposite their names, interrogated employees about those employees' union activities and sympathies:

Agent	Date	Location
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- | | | | |
|-----|---------------------------------|-----------------------------|-------------------------------|
| (a) | Daisy Perez and Elaine Diekmann | Third week of November 2012 | 1188 Sixth Ave., New York, NY |
| (b) | Daisy Perez | November 20, 2012 | 1188 Sixth Ave., New York, NY |
| (c) | Daisy Perez and Elaine Diekmann | November 21, 2012 | 1188 Sixth Ave., New York, NY |
| (d) | Daisy Perez | December 2, 2012 | 1188 Sixth Ave., New York, NY |

19. About November 21, 2012, Respondent McDonald's at 1188 Sixth Ave., by Daisy Perez, at 1188 Sixth Ave., New York, NY:

- (a) engaged in surveillance of employees to discover their union activities;
- (b) created an impression among its employees that their union activities were under surveillance; and
- (c) threatened to more strictly enforce rules regarding lateness and theft because of employees' union activities.

20. (a) On about November 21, 2012, Respondent McDonald's at 1188 Sixth Avenue suspended its employee Jose Carillo.

(b) Respondent McDonald's at 1188 6th Avenue engaged in the conduct described in subparagraph (a) because employee Jose Carillo assisted the FFWC and engaged in concerted activities, and to discourage employees from engaging in those activities.

21. By the conduct described above in paragraphs 18 and 19, Respondents McDonald's and McDonald's at 1188 Sixth Ave., as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

22. By the conduct described above in paragraph 20, Respondent McDonald's and McDonald's at 1188 Sixth Ave., as joint employers, have been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

23. The unfair labor practices of Respondents McDonald's and McDonald's at 1188 Sixth Ave. described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent McDonald's at 280 Madison Ave.

24. (a) At all material times, Respondent McDonald's at 280 Madison Ave. has been engaged in the operation of a quick-service McDonald's restaurant.

(b) At all material times, McDonald's at 280 Madison Ave. has been a New York corporation with an office and place of business at 280 Madison Ave., New York, NY 10036.

(c) Annually, Respondent McDonald's at 280 Madison Ave., in conducting its business operations described above in subparagraphs (a) and (b)

(i) derives gross revenues valued in excess of \$500,000 and

(ii) purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New York.

(d) At all material times, Respondent McDonald's at 280 Madison Ave. has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

25. At all material times, Respondent McDonald's has:

(a) had a franchise agreement with Respondent McDonald's at 280 Madison Ave.;

(b) possessed and/or exercised control over the labor relations policies of Respondent McDonald's at 280 Madison Ave.; and

(c) been a joint employer of the employees of Respondent McDonald's at 280 Madison Ave.

26. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent McDonald's at 280 Madison Ave. within the meaning of Section 2(11) of the Act and agents of Respondent McDonald's at 280 Madison Ave. within the meaning of Section 2(13) of the Act:

(a) Richard R. Cisneros – Owner

(b) Bruny Martinez – Director of Operations

(c) Jeannette Checo – General Manager

27. About November 30, 2012, Respondent McDonald's at 280 Madison Ave., by Richard R. Cisneros, Bruny Martinez, and Jeannette Checo, at 280 Madison Ave., New York, NY:

(a) threatened employees with discharge if they engaged in union activity;

(b) threatened to reduce employees' hours of work if they engaged in union activity;

(c) threatened employees with discharge if they engaged in union activity; and

(d) promised employees unspecified improvements in terms and conditions of employment if they rejected the FFWC as their collective bargaining representative.

28. About December 3, 2012, Respondent McDonald's at 280 Madison Ave., by Bruny Martinez and Jeannette Checo, at 280 Madison Ave., New York, NY:

(a) threatened employees with discharge if they engaged in union activity; and

(b) threatened to reduce employees' hours of work if they engaged in union activity.

29. By the conduct described above in paragraphs 27 and 28, Respondents McDonald's and McDonald's at 280 Madison Ave., as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

30. The unfair labor practices of Respondents McDonald's and McDonald's at 280 Madison Ave. described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent McDonald's at 1651 Broadway

31. (a) At all material times, Respondent McDonald's at 1651 Broadway has been engaged in the operation of a quick-service McDonald's restaurant.

(b) At all material times, McDonald's at 1651 Broadway has been a New York corporation with an office and place of business at 1651 Broadway, New York, NY 10019.

(c) Annually, Respondent McDonald's at 1651 Broadway, in conducting its business operations described above in subparagraphs (a) and (b)

(i) derives gross revenues valued in excess of \$500,000 and

(ii) purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New York.

(d) At all material times, Respondent McDonald's at 1651 Broadway has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

32. At all material times, Respondent McDonald's has:

(a) had a franchise agreement with Respondent McDonald's at 1651 Broadway;

(b) possessed and/or exercised control over the labor relations policies of Respondent McDonald's at 1651 Broadway; and

(c) been a joint employer of the employees of Respondent McDonald's at 1651 Broadway.

33. At all material times, the following individuals held the positions set forth opposite their respective names and have been:

(a) supervisors of Respondent McDonald's at 1651 Broadway within the meaning of Section 2(11) of the Act and agents of Respondent McDonald's at 1651 Broadway within the meaning of Section 2(13) of the Act:

(i) Linda Dunham – President

(ii) Rene Perez – Supervisor

(iii) Winston Joseph – General Manager

(b) supervisors of Respondent McDonald's at 1651 Broadway within the meaning of Section 2(11) of the Act and/or agents of Respondent McDonald's at 1651 Broadway within the meaning of Section 2(13) of the Act:

(i) Arlene Raymond – Shift Manager

34. About late October or early November 2012, Respondent McDonald's at 1651 Broadway, by Arlene Raymond, at 1651 Broadway New York, NY, threatened employees with discharge if they engaged in union activity.

35. About November 29, 2012, Respondent McDonald's at 1651 Broadway, by Arlene Raymond, at 1651 Broadway New York, NY, threatened employees with discharge if they engaged in union activity.

36. About December 17, 2012, Respondent McDonald's at 1651 Broadway, by Rene Perez and Winston Joseph, at 1651 Broadway, New York, NY:

(a) by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they refrained from union activity; and

(b) promised employees a raise if they refrained from union activity.

37. (a) On about December 21, 2012, Respondent McDonald's at 1651 Broadway ceased posting employees' work schedules.

(b) Respondent McDonald's at 1651 Broadway took the action identified in subparagraph (a) in response to union organizing.

38. By the conduct described above in paragraphs 34 through 37, Respondents McDonald's and McDonald's at 1651 Broadway, as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

39. The unfair labor practices of Respondents McDonald's and McDonald's at 1651 Broadway described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent McDonald's at 14 East 47th St.

40. (a) At all material times, Respondent McDonald's at 14 East 47th has been engaged in the operation of a quick-service McDonald's restaurant.

(b) At all material times, McDonald's at 14 East 47th has been a New York limited liability corporation with an office and place of business at 14 East 47th St., New York, NY 10017.

(c) Annually, Respondent McDonald's at 14 East 47th, in conducting its business operations described above in subparagraphs (a) and (b)

(i) derives gross revenues valued in excess of \$500,000 and

(ii) purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New York.

(d) At all material times, Respondent McDonald's at 14 East 47th has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

41. At all material times, Respondent McDonald's has:

(a) had a franchise agreement with Respondent McDonald's at 14 East 47th;

(b) possessed and/or exercised control over the labor relations policies of Respondent McDonald's at 14 East 47th; and

(c) been a joint employer of the employees of Respondent McDonald's at 14 East 47th.

42. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent McDonald's at 14 East 47th within the meaning of Section 2(11) of the Act and agents of Respondent McDonald's at 14 East 47th within the meaning of Section 2(13) of the Act:

(a) Carmen Paulino – Owner

(b) Peter Paulino – General Manager

43. On about December 1, 2012, Respondent McDonald's at 14 E. 47th, by Peter Paulino, at 14 E. 47th St., New York, NY:

(a) threatened employees with unspecified reprisals because of their union activity; and

(b) interrogated employees about their union activities.

44. By the conduct described above in paragraph 43, Respondents McDonald's and McDonald's at 14 E. 47th, as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

45. The unfair labor practices of Respondents McDonald's and McDonald's at 14 E. 47th described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent McDonald's at 840 Atlantic Ave.

46. (a) At all material times, Respondent McDonald's at 840 Atlantic Ave. has been engaged in the operation of a quick-service McDonald's restaurant.

(b) At all material times, McDonald's at 840 Atlantic Ave. has been a New York limited liability corporation with an office and place of business at 840 Atlantic Ave., Brooklyn, NY 11238.

(c) Annually, Respondent McDonald's at 840 Atlantic Ave., in conducting its business operations described above in subparagraphs (a) and (b)

(i) derives gross revenues valued in excess of \$500,000 and

(ii) purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New York.

(d) At all material times, Respondent McDonald's at 840 Atlantic Ave. has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

47. At all material times, Respondent McDonald's has:

- (a) had a franchise agreement with Respondent McDonald's at 840 Atlantic Ave.;
- (b) possessed and/or exercised control over the labor relations policies of Respondent McDonald's at 840 Atlantic Ave.; and
- (c) been a joint employer of the employees of Respondent McDonald's at 840 Atlantic Ave.

48. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent McDonald's at 840 Atlantic Ave. within the meaning of Section 2(11) of the Act and agents of Respondent McDonald's at 840 Atlantic Ave. within the meaning of Section 2(13) of the Act:

- (a) Carmen Paulino – Owner
- (b) Martin Calderon – General Manager

49. Respondent McDonald's at 840 Atlantic Ave., by Martin Calderon, at the McDonald's located at 840 Atlantic Avenue, Brooklyn, NY:

- (a) on occasions in July, August, and mid-November 2012, threatened employees with discharge because of their union activities and support.

- (b) on an unspecified date, threatened employees with unspecified reprisals because of their union activities and support.

- (c) about September 2012, threatened employees with discharge because of their union activities and support.

- (d) on an unspecified date, threatened employees with discharge because of their union activities and support.

50. In about July or August 2012, Respondent McDonald's at 840 Atlantic Ave., by Martin Calderon, at 840 Atlantic Ave., Brooklyn, NY

- (a) interrogated employees about their union activities; and
- (b) instructed employees to refrain from engaging in union activities.

51. In about October 2012, Respondent McDonald's at 840 Atlantic Ave., by Martin Calderon, at 840 Atlantic Ave., Brooklyn, NY:

- (a) engaged in surveillance of employees engaged in union activities;
- (b) by telling employees he was watching them, created an impression among its employees that their union activities were under surveillance by Respondent McDonald's at 840 Atlantic Ave.; and
- (c) instructed employees to refrain from engaging in union activities.

52. By the conduct described above in paragraphs 49 through 51, Respondents McDonald's and McDonald's at 840 Atlantic Ave., as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

53. The unfair labor practices of Respondents McDonald's and McDonald's at 840 Atlantic Ave. described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

McDonald's at 2142 Third Ave.

54. (a) At all material times, Respondent McDonald's at 2142 at Third Ave. has been engaged in the operation of a quick-service McDonald's restaurant.

(b) At all material times, McDonald's at 2142 at Third Ave. has been a Delaware limited liability company with an office and place of business at 220 W. 42nd Street, New York, NY 10036.

(c) Annually, Respondent McDonald's at 2142 at Third Ave., in conducting its business operations described above in subparagraphs (a) and (b),

- (i) derives gross revenues valued in excess of \$500,000 and
- (ii) purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New York.

(d) At all material times, Respondent McDonald's at 2142 Third Ave. has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

55. At all material times, Respondent McDonald's has:

- (a) had a franchise agreement with Respondent McDonald's at 2142 Third Ave.;
- (b) possessed and/or exercised control over the labor relations policies of Respondent McDonald's at 2142 Third Ave.; and
- (c) been a joint employer of the employees of Respondent McDonald's at 2142 Third Ave.

56. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent McDonald's at 2142 Third Ave. within the meaning of Section 2(11) of the Act and agents of Respondent McDonald's at 2142 Third Ave. within the meaning of Section 2(13) of the Act:

- (a) Bruce D. Colley – Owner
- (b) Mike Ortiz – Director of Operations
- (c) Leilani Carr – Area Supervisor

57. About November 30, 2012, Respondent McDonald's at 2142 Third Ave., by Mike Ortiz and Leilani Carr, in the office located in the basement of 2142 Third Avenue, New York, NY, interrogated its employees about their union activities.

58. About December 1, 2012, Respondent McDonald's at 2142 Third Ave., by Mike Ortiz, in the office located in the basement of 2142 Third Avenue, New York, NY, interrogated its employees about their union activities.

59. About December 1, 2012, Respondent McDonald's at 2142 Third Ave., by Mike Ortiz, at 2142 Third Avenue, New York, NY, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they refrained from union activity.

60. By the conduct described above in paragraphs 57 through 59, Respondents McDonald's and McDonald's at 2142 Third Ave., as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

61. The unfair labor practices of Respondents McDonald's and McDonald's at 2142 Third Ave. described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

McDonald's at 2049 Broadway

62. (a) At all material times, Respondent McDonald's at 2049 Broadway has been engaged in the operation of a quick-service McDonald's restaurant.

(b) At all material times, Respondent McDonald's at 2049 Broadway has been a Delaware limited liability corporation with an office and place of business at 2049 Broadway, New York, NY 10023.

(c) Annually, Respondent McDonald's at 2049 Broadway, in conducting its business operations described above in subparagraphs (a) and (b)

(i) derives gross revenues valued in excess of \$500,000 and

(ii) purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New York.

(d) At all material times, Respondent McDonald's at 2049 Broadway has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

63. At all material times, Respondent McDonald's has:

(a) had a franchise agreement with Respondent McDonald's at 2049 Broadway;

(b) possessed and/or exercised control over the labor relations policies of Respondent McDonald's at 2049 Broadway; and

(c) been a joint employer of the employees of Respondent McDonald's at 2049 Broadway.

64. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent McDonald's at 2049 Broadway within the meaning of Section 2(11) of the Act and agents of Respondent McDonald's at 2049 Broadway within the meaning of Section 2(13) of the Act:

- (a) Bruce D. Colley – Owner
- (b) Mike Ortiz – Director of Operations
- (c) Manny Vera – General Manager

65. Respondent McDonald's at 2049 Broadway, by Manny Vera, at 2049 Broadway, New York, NY:

- (a) about February 18, 2013, interrogated its employees about their union activity;
- (b) about March 2013, interrogated its employees about their union activity;
- (c) about March 2013, threatened its employees with unspecified reprisals because they engaged in union activity.

66. By the conduct described above in paragraph 65, Respondents McDonald's and McDonald's at 2049 Broadway, as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

67. The unfair labor practices of Respondents McDonald's and McDonald's at 2049 Broadway described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

McDonald's at 341 5th Ave.

68. (a) At all material times, Respondent McDonald's at 341 5th Ave. has been engaged in the operation of a quick-service McDonald's restaurant.

(b) At all material times, Respondent McDonald's at 341 5th Ave. has been a New York limited liability company with an office and place of business at 341 5th Ave., New York, NY 10016.

(c) Annually, Respondent McDonald's at 341 5th Ave., in conducting its business operations described above in subparagraphs (a) and (b)

(i) derives gross revenues valued in excess of \$500,000 and

(ii) purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New York.

(d) At all material times, Respondent McDonald's at 341 5th Ave. has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

69. At all material times, Respondent McDonald's has:

(a) had a franchise agreement with Respondent McDonald's at 341 5th Ave.;

(b) possessed and/or exercised control over the labor relations policies of Respondent McDonald's at 341 5th Ave.; and

(c) been a joint employer of the employees of Respondent McDonald's at 341 5th Ave.

70. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent McDonald's at 341 5th Ave. within the meaning of Section 2(11) of the Act and agents of Respondent McDonald's at 341 5th Ave. within the meaning of Section 2(13) of the Act:

(a) Bruce D. Colley – Owner

(b) Mike Ortiz – Director of Operations

(c) Alicia “Vicky” Munoz – General Manager

71. About March 2013, Respondent McDonald's at 341 5th Ave., by Vicky Munoz, at 341 5th Avenue, New York, NY, told employees they were prohibited from talking with the union after working hours.

72. By the conduct described above in paragraph 71, Respondents McDonald's and McDonald's at 341 5th Ave., as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

73. The unfair labor practices of Respondents McDonald's and McDonald's at 341 5th Ave. described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

McDonald's at 1531 Fulton St.

74. (a) At all material times, Respondent McDonald's at 1531 Fulton St. has been engaged in the operation of a quick-service McDonald's restaurant.

(b) At all material times, McDonald's at 1531 Fulton St. has been a limited liability company with an office and place of business at 1531 Fulton Street, Brooklyn, NY 11216.

(c) Annually, Respondent McDonald's at 1531 Fulton St., in conducting its business operations described above in subparagraphs (a) and (b)

(i) derives gross revenues valued in excess of \$500,000 and

(ii) purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New York.

(d) At all material times, Respondent McDonald's at 1531 Fulton St. has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

75. At all material times, Respondent McDonald's has:

(a) had a franchise agreement with Respondent McDonald's at 1531 Fulton St.;

(b) possessed and/or exercised control over the labor relations policies of Respondent McDonald's at 1531 Fulton St.; and

(c) been a joint employer of the employees of Respondent McDonald's at 1531 Fulton St.

76. At all material times, the following individuals held the positions set forth opposite their respective names and have been:

(a) supervisors of Respondent McDonald's at 1531 Fulton St. within the meaning of Section 2(11) of the Act and agents of Respondent McDonald's at 1531 Fulton St. within the meaning of Section 2(13) of the Act:

- (i) Carmen Paulino - Owner
- (ii) Carlos Roldan – General Manager
- (iii) Mery G. Diaz – fill-in General Manager

(b) supervisors of Respondent McDonald's at 1531 Fulton St. within the meaning of Section 2(11) of the Act and/or agents of Respondent McDonald's at 1531 Fulton St. within the meaning of Section 2(13) of the Act:

- (i) Veronica Stuart – Shift Manager

77. Respondent McDonald's at 1531 Fulton St., by Carlos Roldan, at 1531 Fulton St., Brooklyn, NY:

- (a) about late January 2013, instructed employees to stop talking about the FFWC;
- (b) about late January 2013, instructed employees to stop talking with FFWC organizers;
- (c) about April 6, 2013, told employees they were prohibited from
 - (i) engaging in union activities; and
 - (ii) talking with coworkers about union activities.
- (d) about April 6, 2013, asked employees to sign a document acknowledging they were told, and that they understood, that they were not to engage in union activities.

(e) about early August 2013, threatened its employees with discharge because they engaged in union activities.

78. About July 30, 2013, Respondent McDonald's at 1531 Fulton St., by Mery G. Diaz, threatened its employees with discharge for engaging in Union activity.

79. About July 30, 2013, Respondent McDonald's at 1531 Fulton St., by Veronica Stuart, threatened its employees with unspecified reprisals for engaging in Union activity.

80. (a) About April 6, 2013, Respondent McDonald's at 1531 Fulton St. issued a written reprimand to its employee David Curry.

(b) Respondent McDonald's at 1531 Fulton St. engaged in the conduct described above in subparagraph (a) because David Curry assisted the FFWC and engaged in concerted activities, and to discourage employees from engaging in these activities.

81. (a) About August 8, 2013, Respondent McDonald's at 1531 Fulton St. discharged its employee Tracee Nash.

(b) Respondent McDonald's at 1531 Fulton St. engaged in the conduct described above in subparagraph (a) because Tracee Nash assisted the FFWC and engaged in concerted activities, and to discourage employees from engaging in these activities.

82. By the conduct described above in paragraphs 77 through 79, Respondents McDonald's and McDonald's at 1531 Fulton St., as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

83. By the conduct described above in paragraphs 80 and 81, Respondent McDonald's and McDonald's at 1531 Fulton St., as joint employers, have been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

84. The unfair labor practices of Respondents McDonald's and McDonald's at 1531 Fulton St. described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

McDonald's at 4259 Broadway

85. (a) At all material times, Respondent McDonald's at 4259 Broadway has been engaged in the operation of a quick-service McDonald's restaurant.

(b) At all material times, McDonald's at 4259 Broadway has been a New York limited partnership with an office and place of business at 4259 Broadway, New York, NY 10033.

(c) Annually, Respondent McDonald's at 4259 Broadway, in conducting its business operations described above in subparagraphs (a) and (b)

(i) derives gross revenues valued in excess of \$500,000 and

(ii) purchases products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New York.

(d) At all material times, Respondent McDonald's at 4259 Broadway has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

86. At all material times, Respondent McDonald's has:

(a) had a franchise agreement with Respondent McDonald's at 4259 Broadway;

(b) possessed and/or exercised control over the labor relations policies of Respondent McDonald's at 4259 Broadway; and

(c) been a joint employer of the employees of Respondent McDonald's at 4259 Broadway.

87. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent McDonald's at 4259 Broadway within the meaning of Section 2(11) of the Act and agents of Respondent McDonald's at 4259 Broadway within the meaning of Section 2(13) of the Act:

- (a) Bruce D. Colley – Owner
- (b) Mike Ortiz – Director of Operations
- (c) Dominga De Jesus – General Manager

88. About November 2012, Respondent McDonald's at 4259 Broadway, by Dominga De Jesus, threatened its employees with restaurant closure if they selected a union as their bargaining representative.

89. About January 2013, Respondent McDonald's at 4259 Broadway, by Dominga De Jesus:

- (a) threatened its employees with reduced work hours if they selected a union as their bargaining representative; and

- (b) threatened its employees with restaurant closure if they selected a union as their bargaining representative.

90. (a) About January 2013, Respondent McDonald's at 4259 Broadway ceased posting employees' work schedules.

- (b) Respondent McDonald's at 4259 Broadway took the action identified in subparagraph (a) in response to union organizing.

91. About April 5, 2013, Respondent McDonald's at 4259 Broadway, by Dominga De Jesus, told employees they were prohibited from accepting literature from union representatives.

92. By the conduct described above in paragraphs 88 through 91, Respondents McDonald's and McDonald's at 4259 Broadway, as joint employers, have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

93. The unfair labor practices of Respondents McDonald's and McDonald's at 4259 Broadway described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before January 2, 2015 or postmarked on or before January 1, 2015.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

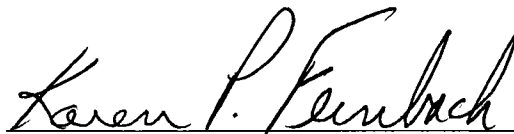
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no

answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **March 30, 2015** at the **Mary Taylor Walker Room at 26 Federal Plaza, Room 3614, New York, New York** and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: New York, New York
December 19, 2014

A handwritten signature in cursive script, reading "Karen P. Fernbach", is written over a horizontal line.

Karen P. Fernbach
Regional Director
National Labor Relations
Region 02
26 Federal Plaza, Suite 3614
New York, NY 10278-3699

Attachments

EXHIBIT B

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**AJD, INC., A McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC, JOINT EMPLOYERS**

**Cases: 02-CA-093895
02-CA-097827**

**LEWIS FOODS OF 42ND STREET, LLC, A
McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC, JOINT EMPLOYERS**

**Cases: 02-CA-093893
02-CA-098662**

**18884 FOOD CORP., A McDONALD'S
FRANCHISEE, AND McDONALD'S USA, LLC,
JOINT EMPLOYERS**

**Cases: 02-CA-094224
02-CA-098676**

**14 EAST 47th STREET, LLC, A McDONALD'S
FRANCHISEE, AND McDONALD'S USA, LLC,
JOINT EMPLOYERS**

**Cases: 02-CA-094679
02-CA-098604**

**JOHN C FOOD CORP., A McDONALD'S
FRANCHISEE, AND McDONALD'S USA, LLC,
JOINT EMPLOYERS**

**Cases: 02-CA-093927
02-CA-098659**

**840 ATLANTIC AVENUE, LLC, A McDONALD'S
FRANCHISEE, AND McDONALD'S USA, LLC,
JOINT EMPLOYERS**

Case: 02-CA-097305

**1531 FULTON STREET, LLC, A McDONALD'S
FRANCHISEE, AND McDONALD'S USA, LLC,
JOINT EMPLOYERS**

**Cases: 02-CA-103771
02-CA-112282**

**McCONNER STREET HOLDING, LLC, A
McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC, JOINT EMPLOYERS**

Case: 02-CA-098009

**McCONNER STREET HOLDING, LLC, A
McDONALD'S FRANCHISEE, AND
McDONALD'S USA, LLC, JOINT EMPLOYERS**

Case: 02-CA-103384

**MIC-EASTCHESTER, LLC, A McDONALD'S
FRANCHISEE, AND McDONALD'S USA, LLC,
JOINT EMPLOYERS**

Case: 02-CA-103726

BRUCE C. LIMITED PARTNERSHIP, A

Case: 02-CA-106094

**McDONALD’S FRANCHISEE, AND
McDONALD’S USA, LLC, JOINT EMPLOYERS**

and

**FAST FOOD WORKERS COMMITTEE AND SERVICE
EMPLOYEES INTERNATIONAL UNION, CTW, CLC**

**MCDONALD’S USA, LLC’S MOTION FOR A BILL OF PARTICULARS OR, IN THE
ALTERNATIVE, MOTION TO STRIKE JOINT EMPLOYER ALLEGATIONS AND
DISMISS THE COMPLAINT**

Pursuant to Section 102.24 of the National Labor Relations Board’s (“Board”) Rules and Regulations, Respondent McDonald’s USA, LLC (“McDonald’s”), by and through its undersigned counsel, hereby moves for an order requiring the Regional Director of Region 2 to specify with particularity in the Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing (“Complaint”) the factual basis upon which she relies in alleging that McDonald’s is a joint employer with its independent franchisees. In a case with far-reaching consequences for McDonald’s and franchisors throughout the country, and in which the General Counsel seeks to change the legal standard for determining joint employer status and has consolidated claims against 11 independent corporate entities based solely on allegations that McDonald’s is a joint employer, the Complaint contains only three vague, conclusory allegations regarding McDonald’s joint employer status. Namely, the Complaint alleges (1) the existence of a franchise agreement between McDonald’s and each independent franchisee, (2) a conclusory assertion that McDonald’s “possessed and/or exercised control over the labor relations policies” of each franchisee, and (3) a legal conclusion that McDonald’s is a joint employer. The Regional Director’s bare-bones allegations provide insufficient notice to McDonald’s of the basis for the alleged joint employer status, depriving McDonald’s of its fundamental right to due process

pursuant to the Fifth Amendment to the U.S. Constitution. In order for McDonald's to have a full and fair opportunity to defend itself against these unprecedented allegations, the Regional Director must first specify with particularity the underlying factual basis as to each and every franchisee.

If the Regional Director does not describe with particularity the basis for the allegations in the below-identified paragraphs, as mandated by the Administrative Procedure Act, Section 102.15 of the Board's Rules and Regulations, Paragraph 10266 of the Board's Casehandling Manual, and Section 300.3 of the NLRB Pleadings Manual-Complaint Forms, then McDonald's moves that such paragraphs of the Complaint be stricken and the Complaint against McDonald's be dismissed for failure to state a claim.

THE JOINT EMPLOYER ALLEGATIONS

To satisfy due process, the General Counsel is obligated "to clearly define the issues and advise an employer charged with a violation . . . of the specific complaint he must meet . . . [and the failure to do so] is . . . to deny procedural due process of law." Soule Glass Co. v. NLRB, 652 F.2d 1055, 1074 (1st Cir. 1981). *See also* SFTC, LLC d/b/a Santa Fe Tortilla Company, 360 NLRB. No. 130 at 2 n. 9 & 10 n. 6 (June 13, 2014) (affirming ALJ decision to dismiss allegations on due process grounds, in which ALJ explained, "[Respondent] is entitled to due process. That is, it is entitled to know ahead of time what alleged violations it must defend. It is, after all, a simple matter to prepare or amend a complaint that does so.") The Administrative Procedure Act, the Board's Rules and Regulations, and the Board's Casehandling Manual demand that the Complaint notify the Respondent of the facts and law at issue so the Respondent has a full and fair opportunity to prepare a defense. *See* Administrative Procedure Act, 5 U.S.C. § 554(b)(3) ("Persons entitled to notice of an agency hearing shall be timely informed of . . . the

matters of *fact and law* asserted”); NLRB Rules and Regulations, Rule 102.15 (“The complaint shall contain . . . a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent’s agents or other representatives by whom committed”); NLRB Casehandling Manual § 10268.1 (The Complaint “sets forth . . . the facts relating to the alleged violations by the respondent(s)”). And the NLRB Pleadings Manual-Complaint Forms also encourages descriptive pleading for joint employer allegations. *See* NLRB Pleadings Manual § 300.3(b) (suggesting drafter of a complaint containing a joint employer allegation should “[i]nset [a] description of [the] business venture. For example, Employer A utilizes the referral services of Employer B when hiring employees for its facility located at ____.”)

Here, paragraphs 5, 16, 25, 32, 41, 47, 55, 63, 69, 75 and 86 of the Complaint contain identical joint employer allegations that fail to satisfy these requirements. Each paragraph refers to the existence of a franchise agreement, states that McDonald’s “possessed and/or exercised control over the labor relations policies of” each franchisee, and asserts that McDonald’s is a joint employer with each franchisee. These allegations are plainly insufficient to establish a joint employer relationship under the legal standard for determining joint employer status. “The test for joint-employer status is whether two entities ‘share or codetermine those matters governing the essential terms and conditions of employment.’” *See Flagstaff Med. Ctr., Inc.*, 357 NLRB No. 65, 2011 WL 4498271, at *11 (Aug. 26, 2011) (quoting *Laerco Transportation*, 269 NLRB 324, 325 (1984)). The mere existence of a franchise agreement does not weigh in favor of a finding of joint employer status. Nor does the Complaint point to any provision of the franchise agreement that does so. Finally, the Complaint does not identify with any particularity how McDonald’s allegedly possesses and/or exercises control over the labor relations policies of its

franchisees, much less identify the labor relations policies at issue.

These paltry allegations do not provide McDonald's with notice of the charges against it or identify a particular standard of conduct that McDonald's engaged in to make it a joint employer. Accordingly, McDonald's cannot defend itself against these claims. Thus, the Regional Director should be ordered to provide the particulars of the seminal joint employer allegation, or those paragraphs should be stricken and the Complaint should be dismissed as to McDonald's.

WHEREFORE, having demonstrated that paragraphs 5, 16, 25, 32, 41, 47, 55, 63, 69, 75 and 86 in the above-captioned Complaint are insufficient pursuant to the Fifth Amendment to the U.S. Constitution, the Administrative Procedure Act, the Board's Rules and Regulations, the Board's Casehandling Manual, and the Board's Pleading Manual-Complaint Forms by virtue of failing to specify the factual basis for the joint employer allegations against McDonald's, McDonald's respectfully requests that:

(1) The Regional Director be ordered promptly to provide the specifics and particulars of those joint employer allegations contained in, and as to each franchisee named in paragraphs 5, 16, 25, 32, 41, 47, 55, 63, 69, 75 and 86 of the Complaint; and

(2) Upon the Regional Director's failure or inability to provide such specific and particular information to support the allegations in paragraphs 5, 16, 25, 32, 41, 47, 55, 63, 69, 75 and 86 of the Complaint, those allegations be stricken and the Complaint be dismissed as to McDonald's.

Dated: December 29, 2014

Respectfully submitted,

s/ Willis J. Goldsmith

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Attorneys for McDonald's USA, LLC

CERTIFICATE OF SERVICE

The undersigned, an attorney admitted to practice before the Courts of the States of Illinois and Missouri, affirms under penalty of perjury, that, on December 29, 2014, he caused a true and correct copy of McDonald's USA, LLC's Motion for A Bill of Particulars or, In the Alternative, Motion to Strike Joint Employer Allegations and Dismiss the Complaint, to be served upon counsel for the parties by e-mail (where indicated) and/or first-class mail in a postage-prepaid, properly addressed envelope at the following addresses designated for this purpose:

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

MCDONALD'S USA, LLC, *ET AL.*

02-CA-093893 et al.

And

**FAST FOOD WORKERS COMMITTEE AND SERVICE EMPLOYEES
INTERNATIONAL UNION, CTW, CLC**

AFFIDAVIT OF SERVICE OF:

**GENERAL COUNSEL'S OPPOSITION TO RESPONDENT McDONALD'S USA,
LLC'S MOTION FOR A BILL OF PARTICULARS OR TO STRIKE THE JOINT
EMPLOYER ALLEGATIONS AND DISMISS THE COMPLAINT**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on January 14, 2015 I served the above-entitled document(s) upon counsel for the parties by electronic mail at the following addresses:

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Subscribed and sworn before me this 14th
day of January 2015

/s/ Sara Strozier

Sara Strozier